

MULTIMEDIA



UNIVERSITY

STUDENT ID NO

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MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2021/2022

ULT 2612 – LAW OF TORTS I

(All sections / Groups)

20 NOVEMBER 2021

Reading Time: 9.15 a.m. – 9.30 a.m.

(15 Minutes)

Answering Time: 9.30 a.m. – 12.30 a.m.

(3 Hours)

INSTRUCTIONS TO STUDENTS

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes **ONLY** in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.
2. This Question paper consists of 4 pages with 5 questions only.
3. Part A consists of two questions and Part B consists of three questions. Attempt **ALL** questions in Part A and choose **TWO** questions from Part B. All questions carry equal marks and the distribution of the marks for each question is given.
4. Please write all your answers in the Answer Booklet provided.

PART A**ANSWER ALL QUESTIONS****QUESTION 1**

Ganesh is a senior manager at a multinational company which is based in Kuala Lumpur. Due to the Covid-19 pandemic, the company has downsized the operation of the business and some of the employees' employment have been terminated. Ganesh is still employed but the company has had to deduct his salary. Hence, Ganesh who has a big financial commitment has had to adjust and cut off some of his monthly expenditure.

Due to a shortage of staff, Ganesh was given a huge responsibility to handle three megaprojects of the company simultaneously. He had to travel to Kuching, Kota Kinabalu, and Ho Chi Min City in order to ensure the smooth running of all the projects. Since the number of Covid-19 cases worldwide was increasing, most of the time he had to adhere to and follow the standard operating procedures and quarantine regulations which were so burdensome. After some time, he was diagnosed by the doctor to have developed mild anxiety and depression due to his hectic schedules and financial constraints.

Last month, while he was on his way to the airport, he met with an accident which was caused by Samuel, a lorry driver. Consequently, his left leg was fractured and his head was injured. Ganesh already had a problem with his knee meniscus, which deteriorated due to the accident. Dr. Zain of Mawarku Medical Centre had advised Ganesh that he had to have a good rest for at least a week after discharge to recover. As the project in Kuching was still at the initial stage, he thought he had to be there to supervise all the workers and staff. Two days after discharge, he flew to Kuching to settle his work. As a result, his leg became swollen and Dr Zain told him that surgery was necessary in order to reduce his pain.

However, he refused to undergo surgery and continued his work as usual. Last week, he fainted while he was at work. The doctor found that he had severe brain damage and his left leg needs to be amputated.

Ganesh came to you for an advice on his claim against Samuel. Apply the tort of negligence in solving his legal claim.

(Total: 25 marks)

Continued...

QUESTION 2

Mike and Harvey are business partners, selling tailor-made suits for their clients. In July 2020, after the district travel was allowed, Datuk Louis, a regular customer, requested Mike and Harvey to meet him at his mansion in Langkawi so that they could design a special tailor-made suit for him to wear during his new business launch. Since they planned to go to a beautiful island in Langkawi, Mike decided to bring his wife, Rachel, and his five-year-old son, Mikey. All of them stayed at Gaya Hotel for three days. After they checked-in into the hotel, Harvey and Mike agreed to meet at the hotel café at 4 pm to discuss the designs before they met Datuk Louis. At around 3.55 pm, Harvey rushed to take the elevator on the second floor. However instead of stepping into an elevator, he stepped into an empty shaft. He fell and his right arm was fractured as it banged against the shaft. The maintenance man who was in the lift shaft managed to grab him before he fell hard onto the floor. There were no signs stating the elevator was under maintenance.

Since Harvey suffered from a fractured arm, Mike went to meet Datuk Louis alone. That evening, as Mike was walking on a pathway in Datuk Louis's garden, towards the mansion, Mike received an important phone call from Donna. He was so engrossed in the discussion that he did not realize that he had trailed off the pathway and had stepped into a hidden trap. Luckily, he suffered only a slight cut as he managed to avoid his feet from fully stepping into the trap just in time. Mike related the incident to Datuk Louis but Datuk Louis stated that he was not aware that there was a hidden trap in his land. He further mentioned that he bought the mansion from the previous owner a few weeks ago. Feeling guilty, Datuk Louis invited Mike and his family to his house warming party the following night. Mike accepted the invitation thinking that it would be a good opportunity to socialize to expand his business.

The following night, while Mike, Rachel, and Mikey were enjoying the housewarming party, Mikey suddenly trailed off from his parents when he saw a huge white Persian cat. Rachel noticed her son wandering off to chase the cat and quickly chased after Mikey. While she was chasing Mikey, she stepped on one of the upper staircases, fell down and sprained her ankle. Apparently, there was a cracked hole in one of the upper staircases. Datuk Louis noticed the crack earlier that evening and was going to ask someone to repair it the next day as he thought it would not bring any harm. Mike heard the commotion and quickly attended to Rachel. Mikey continued to chase the cat until he found an indoor fountain in the house. Mikey jumped into the three-foot fountain and almost drowned as he could not swim. Scottie and Jessica, who were guests at the party saw Mikey and quickly rushed to the fountain. Scottie quickly grabbed Mikey out of the water. However, Jessica was too stunned to help and stood aside. Mikey did not suffer any injuries, but he was traumatized by the incident.

Based on the above incidents, Gaya Hotel and Datuk Louis come to you to seek your advice on occupier's liability. Apply the principles of law of torts in determining the occupier's liability. Assess also whether Jessica may claim for nervous shock since she cannot sleep after seeing Mikey almost drowned.

(Total: 25 marks)

Continued...

PART B
ANSWER TWO QUESTIONS ONLY

QUESTION 3

In the case of *Che Din Mohamed Hashim v Teoh Ong Thor and Chew Chan Seng* (1950) MLJ 238 it was held that a mortgagee has the right to maintain an action in conversion provided he has a right to immediate possession.

In the light of the above statement, discuss the law of conversion and to what extent it protects the plaintiff's interest in the dominion and control of his goods as opposed to any interest in the physical condition of the goods.

(Total: 25 marks)

QUESTION 4

- a) Discuss the similarities and differences between Qualified Privilege and Reynold's Privilege. Support your answers with relevant authorities.
- b) Belle, a social media influencer shared a video on her Instagram story stating that her university classmate 'A' is a sexual predator. Amri, who is one of Belle's classmate received backlash from his classmates as he is the only classmate whose name starts with the letter 'A'. After a few hours, Belle deleted the video in her Instagram story but it was reposted by Chantik.

Discuss whether Belle's statement falls under libel or slander. Discuss also whether the act of reposting a defamatory statement may constitute defamation.

(Total: 25 marks)

QUESTION 5

- a) In *F v Berkshire Health Authority* [1989] 2 All ER 545, Lord Goff in delivering his judgment as follow:

"A prank that gets out of hand, an over-friendly slap on the back may transcend the bound of lawfulness, without being characterised as hostile.. the suggested qualification is difficult to reconcile with the principle that any touching of another's body is, in the absence of lawful excuse, capable of amounting to a battery and a trespass."

Based on the above, it is submitted that the touching must be hostile for the plaintiff to be liable for battery. Do you agree with the statement? Discuss with the aid of decided cases.

(12 marks)

Continued...

- b) Interference to land which is caused by an aircraft has become common nowadays due to many aircraft crash incidents occurring in recent years. The owners of land who suffer damage due to the crash has the right to bring the claim against the trespassers. In the meantime, due to advancement of technologies, the rapid use of drones nowadays also has resulted in few cases of trespass to land or the airspace above the land.

In the light of the above, explain the extent of defendant's liability in trespass to land or airspace due to an interference by drones with special reference to the principles of law of torts and relevant statute.

(13 marks)

(Total: 25 marks)

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